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Via Electronic Mail Only

Daniel Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

**Re: Docket No. DG 20-105; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty
Request for Change in Rates**

Dear Chairman Goldner:

On behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp., and pursuant to the Commission's August 18, 2022, procedural order in this docket, following is the Company's response to the Department of Energy's recommendation regarding rate case expenses.

DOE recommended that Liberty largely recover its requested rate case expenses except for (1) the legal and consulting costs associated with recovering costs related to the Granite Bridge feasibility study, which include \$12,893 in legal expenses from the Keegan Werlin firm and \$34,215 in consulting expenses from ScottMadden, and (2) the costs Concentric incurred to analyze the Company's decoupling mechanism, \$48,382.

Costs to Litigate Liberty's Request to Recover Granite Bridge Costs.

DOE argues the costs incurred to seek recovery of the Granite Bridge feasibility costs are not "rate case expenses" because they "are unrelated to any of the financial information examined in a rate case," because they "were proposed for inclusion in its Local Distribution Adjustment Clause (LDAC) not, the base distribution rates," and because they "are fundamentally different from the typical rate case expenses that are incurred to present and examine utility's cost of service and revenue requirement." DOE Recommendation at 2.

The Commission should reject DOE's recommendation because DOE relies on an improperly narrow definition of "rate case expenses," and because DOE ignores the impact of the Commission's order that specifically included in this rate case the litigation of the Granite Bridge costs, thus rendering those litigation costs "rate case expenses."

It is first important to distinguish between the Granite Bridge costs themselves (the costs incurred to investigate and analyze the feasibility of the Granite Bridge project as compared to its alternative), and the costs incurred to seek recovery of those costs in this rate case proceeding. The costs at issue here are only the litigation costs Liberty incurred during the rate case in its efforts to seek recovery of the Granite Bridge costs. Whether the Company may recover the underlying Granite Bridge feasibility costs is a separate issue now pending before the New Hampshire Supreme Court.

Second, it is important to note that Liberty only included in its rate case expenses those costs incurred in its efforts to recover the Granite Bridge costs before the Commission. Liberty has not included costs to prosecute the appeal of the Commission's order denying recovery of the Granite Bridge costs.

On the merits, DOE's recommendation that these litigation costs are not "rate case expenses" should be rejected because DOE mis-reads the applicable rule. By referring to "typical" rate case expenses, DOE improperly narrows the definition of "rate case expenses" contained in Puc 1903.05 and improperly disregards the Commission's orders that specifically included the Granite Bridge costs as an element of this rate case proceeding.

Puc 1903.05 defines "rate case expenses" as "those non-recurring expenses incurred by a utility in the preparation or presentation of a full rate case proceeding before the commission, necessary for the conduct of the rate case." The definition does not limit rate case expenses to those "typical" of a rate case. It includes all expenses incurred "in the preparation or presentation" of its rate case. There is no dispute that the costs at issue (the legal and consulting costs incurred to present the Company's argument that it should recover the Granite Bridge costs) were incurred as part of the rate case proceeding. That they related to an unusual rate case issue is irrelevant. They were incurred in the "presentation of a full rate case" and were "necessary for the conduct of that rate case."

Second, DOE's recommendation minimizes the import of the Commission's order directing Liberty to bring the Granite Bridge cost recovery issue to this docket.

Order No. 26,409 (Oct. 6, 2020), issued in Docket No. DG 17-198, the Granite Bridge docket, addressed Liberty's motion to amend its petition in that docket to include Liberty's request to recover the Granite Bridge feasibility costs. In denying Liberty's motion, the Commission stated:

With regard to Liberty's request for authority to recover the costs of the Granite Bridge Project, this docket was not noticed as, and was never intended to be, a cost recovery or ratesetting docket. Whatever level of approval Liberty expected of its Granite Bridge Project, that approval could not substitute for the prudence determination the Commission might make once the Project were in use, used and useful, and rate recovery were sought. Requests for authority to recover capital project and supply planning costs are appropriately reviewed in a full rate case.

Order No. at 13 (emphasis added).

Liberty subsequently filed a motion to add to this docket its request to recover the Granite Bridge costs. No one filed an objection. On December 18, 2020, the Commission issued a Supplemental Order of Notice in this docket accepting the issue of Granite Bridge cost recovery:

On November 20, 2020, Liberty filed a Motion to Amend Petition (Motion) to add to this proceeding a request to recover costs incurred to investigate, evaluate, and assess the future development of the Granite Bridge Project proposed in Docket DG 17-198, a project that Liberty has since withdrawn (Granite Bridge Project Costs).

In its Motion, Liberty stated that it filed its request to recover Granite Bridge Project Costs in this rate proceeding based on the Commission's statement in Order No. 26,409, issued on October 6, 2020 in Docket No. DG 17-198, that a request to recover Granite Bridge Project Costs is "appropriately reviewed in a full rate case." Id. at 13. Liberty seeks recovery of Granite Bridge

Project Costs through a reconciling charge within the Local Distribution
Adjustment Clause.

Supplemental Order of Notice at 1-2. This issue of Granite Bridge cost recovery thereafter proceeded within this docket as one of the issues to be decided by the Commission.

DOE attempts to carve out the Granite Bridge cost issue from the rate case, and thus from the rate case expenses, arguing that “The Granite Bridge development costs and the costs incurred to pursue LDAC recovery are fundamentally different from the typical rate case expenses that are incurred to present and examine utility’s cost of service and revenue requirement.” Whether “typical” or not, the Commission had specifically ruled that review of the Granite Bridge costs “are appropriately reviewed in a full rate case.”

The legal and consulting expenses Liberty incurred to present the Granite Bridge cost issue to the Commission in this rate case are thus “rate case expenses” that Liberty should be able to recover.

Costs to Analyze the Decoupling Mechanism.

Liberty hired Concentric Energy Advisors (Concentric) to analyze the decoupling mechanism to help diagnose why the mechanism was directing the Company to return unexpectedly large revenues to customers. Concentric had presented testimony in support of the decoupling mechanism when approved in Docket DG 17-048.

This issue of the decoupling mechanism’s unexpected results was central to this rate case. As mentioned in separate filings in cost of gas proceedings and the newly opened DG 22-041, the parties agreed in this docket to changes in the tariff that cured one of the major issues giving rise to the unexpected results. Concentric’s work, although not successful in finding the tariff issue discussed in DG 22-041, was necessary to identify other causes of the erratic results of the decoupling mechanism to inform any corrections to the tariff to occur in this docket. Indeed, the Concentric analysis found several other factors contributing to the unexpected decoupling results.

DOE argues Concentric’s costs should be excluded from recovery as a rate case expense because its work was unsuccessful: “the Department contends that ratepayers should not be required to pay for the costs of Concentric’s review, which failed to identify

this alleged significant flaw.” Recommendation at 3. As noted above, the Concentric analysis was both successful in other areas and was a necessary step to inform the parties’ and Commission’s understanding of how the mechanism was actually working to better understand changes to be made.

Also, to the extent the Concentric report did not identify the issue now addressed in DG 22-041 is irrelevant. The standard for approving rate case expenses is prudence, not success. It was prudent for Liberty to engage Concentric to analyze the decoupling mechanism, just as it is prudent for Liberty to engage consultants to, for example, prepare rate of return testimony. The fact that Concentric did not identify one issue (although it identified others) does not change the fact that the decision to hire Concentric, the consultant that has supported the Company with the decoupling mechanism since its inception, was prudent. (Note that DOE does not argue against recovery of the costs of Liberty’s ROE expert, even though the Commission did not adopt his recommendations.)

Subsequent Rate Case Expense

As of August 1, 2021, rate case expenses reviewed by the NHDOE Audit Division for expenses incurred by Liberty, DOE, and OCA in support of the rate case filing totaled \$741,520.

Since the completion of DOE’s October 11, 2021, audit and through August 31, 2022, the Company has incurred an additional \$106,680 of rate case expense, which have thus not been audited. The following summarizes the additional activity by vendor:

- Keegan Werlin: \$33,943 related to rate case settlement and step adjustment activity;
- Management Applications Consulting: \$37,997 related to depreciation study to review the depreciation reserve and cost of removal required as part of the settlement agreement in this docket, the results of which were to be (and were) filed with the second step adjustment;
- Court Reporter: reduction of \$1,310;
- Blue Ridge Consulting, DOE consultant: \$2,250 of additional invoices received from DOE; and

- J. Randall Woolridge, DOE consultant: \$33,800 of additional invoices received from DOE.

Audit recommended that the total Rate Case Expense recovery figure of \$741,520 be reduced by \$47,108 (\$12,893 in Keegan Werlin costs and \$34,215 in ScottMadden costs related to Granite Bridge project costs) resulting in a revised recovery amount of \$694,412.

As discussed above, DOE recommends that the total Rate Case Expense recovery figure of \$741,520 be reduced by \$95,490 (\$12,893 in Keegan Werlin costs and \$34,215 in ScottMadden costs related to Granite Bridge project costs, and \$48,382 in Concentric costs related to review of decoupling mechanism) resulting in a revised recovery amount of \$646,030.

Company Recommendation.

The Company recommends approval of \$848,198 in rate case expenses as detailed in the Company's LDAC filing, Docket No. DG 22-045, which figure includes the contested expenses discussed above and the additional expenses received since DOE's audit, as described above.

The Company also recommends that DOE audit the additional rate case expenses incurred since the October 2021 audit.

The Company has proposed a 12 month recovery of these rate cases expenses through the LDAC rate effective November 1, 2022, as described in DG 22-045.

Sincerely,



Michael J. Sheehan

Cc: Service List

Audit Issue #2
Overstatement of Projected Rate Case Expense

Background

The Company included updated rate case expense totals within the LDAC portion of the DG 22-045 Winter Cost of Gas docket, as directed by Order 26,691.

Issue

The LDAC filing schedule 6 in DG 22-045 includes interest in an unknown amount in the beginning balance, as well as projected interest of \$17,048.

Recommendation

The Company must deduct all interest from the LDAC filing and stop accruing interest on rate case expenses, as noted in Order 26,691, page 3:

*“**ORDERED**, that Liberty is authorized to recover \$680,770 in approved rate case expenses through the LDAC mechanism, **without interest**, between November 1, 2022 and October 31, 2023;”* (emphasis added)

The Company is also reminded of “*Puc 1907 Expenses Not Allowed. Expenses not recoverable as rate case expenses shall include: Puc 1907.01 (f) interest charges on rate case expenses*”.

Company Comment

The Company is not clear as to the reference from Audit related to the LDAC filing schedule 6 in DG 22-045 including interest in an unknown amount in the beginning balance. The interest calculated on Page 2 of Schedule 6 relates to recoupment amounts and the interest associated with the over/under collection of the approved recoupment recovery over the November 2021 through October 2022 LDAC billing period.

The approved rate case expense from Docket No. DG 20-105 in Order No. 26,691 in the amount of \$680,768 is shown on line 3 of Schedule 6, Page 1. Per Puc 1907.01 (f), this amount does not include any interest accrued on the rate case expenses incurred.

The Company’s tariff allows for interest to be calculated on the over/under recovery balance once recovery of the expense through the LDAC charge begins as defined on Page 70 of Tariff NHPUC No. 11, LDAC section F.7.

“Reconciliation Adjustments: Account 1930-1745 shall contain the accumulated difference between revenues toward Rate Case Expenses as calculated by multiplying the Rate Case Expense Factor (“RCEF”) times the appropriate monthly volumes and Rate

Case Expense allowed, plus carrying charges added to the end-of-month balance. The carrying charges shall be calculated beginning on the first month of the recovery period by applying the monthly prime lending rate, as reported by the Federal Reserve Statistical Release of Selected Interest Rates to the average monthly balance.”

The \$17,048 of projected interest is related to the projected over/under collection over the November 2022 through October 2023 LDAC billing period and will be reconciled with actual collections and interest calculation once the recovery begins.

Audit Conclusion

Audit reviewed the tariff page 70, which does not deal with the LDAC.

Per the PUC.NH.GOV online tariff effective 11/1/2018, page 40, LDAC Section 17 F.7 does reflect:

“Reconciliation Adjustments: Account 1930-1745 shall contain the accumulated difference between revenues toward Rate Case Expenses as calculated by multiplying the Rate Case Expense Factor (“RCEF”) times the appropriate monthly volumes and Rate Case Expense allowed, plus carrying charges added to the end-of-month balance. The carrying charges shall be calculated beginning on the first month of the recovery period by applying the monthly prime lending rate, as reported by the Federal Reserve Statistical Release of Selected Interest Rates to the average monthly balance. At the end of the recovery period, any under or over recovery will be included in an active LDAC component, as approved by the Commission.”

Per updated proposed and redlined tariff pages filed in DG 20-105, on August 16, 2022, third revised page 43

“1930-1745 Rate Case Expense/Temporary Rates Reconciliation Adjustment: This account shall be used to record the cumulative difference between the recovery and actual amounts of third party incremental expenses associated with the Company’s Rate Case initiatives and the difference between the final and temporary distribution rates. Entries to this account shall be determined as outlined in the Local Distribution Adjustment Charge, 17(F).”

A non-compliance letter was sent to the Company on 9/15/2022 which addressed other tariff pages that needed revisions.

The Order specifically disallowing any interest was issued 9/29/2022.

Audit suggests that the Company also update the tariff page 43 to eliminate the reference to interest on rate case expense recovery, as the Order disallowing interest is more current than the existing and proposed tariff pages.

The reader is also reminded that the referenced interest of \$17,048, as stated above, is the *estimated* interest the Company calculated for the upcoming LDAC recovery period of November 2022 through October 2023. It is that amount which should not be collected. The overcollection should be adjusted to zero in the next proposed 2023-2024 LDAC filing.